

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF:

JOSEPH J. KOY,

Complainant,

and

PARAMOUNT PLASTICS, INC.,

Respondent.

CHARGE NO(S): 2008CA2785
EEOC NO(S): N/A
ALS NO(S): 09-0333

NOTICE

You are hereby notified that the Illinois Human Rights Commission has not received timely exceptions to the Recommended Order and Decision in the above named case.

Accordingly, pursuant to Section 8A-103(A) and/or 8b-103(A) of the Illinois Human Rights Act and Section 5300.910 of the Commission's Procedural Rules, that Recommended Order and Decision has now become the Order and Decision of the Commission.

STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION

Entered this 23rd day of August 2010

N. KEITH CHAMBERS
EXECUTIVE DIRECTOR

**STATE OF ILLINOIS
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RECOMMENDED ORDER AND DECISION

This matter is before me on Respondent's motion to dismiss the Complaint for lack of jurisdiction, filed August 26, 2009. Complainant filed a response in opposition to the motion and Respondent filed a reply. Both parties appeared for oral argument on the motion on October 13, 2009.

The record indicates that the motion has been served upon all parties and the Illinois Department of Human Rights. The Illinois Department of Human Rights is an additional statutory agency that has issued state actions in this matter. It is, therefore, named herein as an additional party of record.

CONTENTIONS OF THE PARTIES

Respondent maintains that the Commission lacks jurisdiction over this Complaint because it was not filed with the Illinois Human Rights Commission (Commission) within the statutory time period pursuant to the Illinois Human Rights Act (Act), 775 ILCS 5/1-101 *et seq.* Complainant contends that the Complaint is timely filed since she elected to opt out of the Department investigative process and file this Complaint with the Commission.

FINDINGS OF FACT

The following findings were made from undisputed facts in the record:

1. Complainant filed a perfected *Charge of Discrimination* (Charge) with the Illinois Department of Human Rights (Department) on March 17, 2008. Subsequently, the parties entered into two extensions: one for 180 days and another for an additional 90 days.
2. On June 26, 2009, Complainant, on her own behalf, filed this Complaint with the Commission.
3. Respondent filed a motion to dismiss the Complaint for lack of discrimination on August 26, 2009.
4. In its motion, Respondent attaches the following documents: Exhibit A, a copy of the underlying Charge, dated March 17, 2008; Exhibit B, a Department extension form, dated May 28, 2008, signed by both parties, agreeing to a 180-day extension of the Department's investigative time period, and a second Department extension form, dated July 23, 2009, signed by both parties, agreeing to an additional 90-day extension of the Department's investigative time period.

CONCLUSION OF LAW

The Commission lacks jurisdiction over this Complaint because it was not filed in accordance with Section 5/7A-102(G)(2) of the Act.

DETERMINATION

Respondent's motion to dismiss this Complaint must be granted, as the Commission lacks jurisdiction over this Complaint.

DISCUSSION

Respondent maintains that this Complaint is not properly before the Commission, as it was prematurely filed. Complainant contends that the Complaint is timely filed since she elected to opt out of the Department investigative process and file this Complaint with the Commission.

The facts are not in dispute. The Charge underlying this Complaint was filed with the Department on March 17, 2008. Subsequently, both parties agreed in writing to a 180-day

extension and then to an additional 90-day extension of the Department's investigative period. In its motion, Respondent attaches the following documents: Exhibit A, a copy of the underlying Charge, dated March 17, 2008; Exhibit B, a Department extension form dated May 28, 2008, signed by both parties agreeing to an 180-day extension of the Department's investigative period, and a second Department extension form, dated July 23, 2009, signed by both parties agreeing to an additional 90-day extension of the Department's investigative period.

Complainant does not dispute the authenticity of Respondent's exhibits.

Based merely on the initial 180-day extension, the parties agree that the time for the investigative period to expire was calculated to be September 16, 2009. Because Complainant filed the instant Complaint on June 26, 2009, the parties concur that the Complaint was untimely filed. The parties further agree that pursuant to the second extension, the time for the Department's investigative period to expire is calculated to be in December, 2009.

Complainant submits absolutely no authority for his position that the Complaint was timely filed because he elected to exercise his statutory right to opt out of the Department investigative process and file a complaint with the Commission.

For charges filed on or after January 1, 2008, Section 5/7A-102(G) (2) of the Act, in relevant part, provides that if the Department has not issued its investigative report within 365 days after the charge is filed, or within any such longer period agreed to in writing by all the parties, the complainant shall have 90 days to either file his or her own complaint with the Commission or commence an civil action in the appropriate circuit court. The parties do not suggest nor is there anything in the record to suggest that, at the time the Complaint was filed, the Department had completed its investigation and had issued a report in accordance with the Act at Section 5/7A-102(D).

The undisputed facts in the record show that the Complaint was not filed within the statutory period as contemplated by the parties' agreed upon extensions of the Department's investigative period. Thus, there is no basis for jurisdiction before the Commission at this time.

RECOMMENDATION

I recommend that this Complaint be dismissed without prejudice and that the Charge not be dismissed so the Department can continue its ongoing investigation.

HUMAN RIGHTS COMMISSION

By: _____
SABRINA M. PATCH
Administrative Law Judge
Administrative law Section

ENTERED: October 14, 2009